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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,098	03/15/2004	Robert S. Melesko	033327.0017	9262
7590 Thomas F. Bergert Williams Mullen, PC Suite 700 8270 Greensboro Drive McLean, VA 22102				
			EXAMINER McCULLOCH JR, WILLIAM H	
			ART UNIT 3714	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/801,098

**Applicant(s)**

MELESKO ET AL.

**Examiner**

WILLIAM H. MCCULLOCH JR

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. This action is in response to amendments received 11/15/2007. Claims 1-31 are pending in the application, with claims 1-9, 11-22, and 24-31 currently amended.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 27 (and claims depending therefrom) are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 1, the amended claim language recites "displaying a third interface associated with an application provided by one or more third party application providers via the network". On page 6, lines 20-25, the specification indicates that third party software applications 18 or a standard Internet browser 19b can provide the user interface for lottery activities. There is no indication that both a third party application and a browser can provide the user interface, which indicates that the POS terminal would use only one or the other, not both. Note that the claimed "second interface" may correspond to an Internet browser (i.e. web browser), as evidenced by claim 13. For

this reason, claim 1 is not enabled by the specification. Appropriate correction is required.

Regarding claim 27, the amended claim language recites "an application programming interface for receiving third party gaming applications". The specification is devoid of any indication that the application programming interface (API) is capable of "receiving" third party gaming applications, nor is it clear how an API is capable of receiving an entire application. An API, as is known in the art, is merely a set of routines used by an application program to direct the performance of procedures by the computer's operating system. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,267,670 to Walker et al. (hereinafter Walker).

Regarding claim 1, Walker teaches a transaction processing device and method for conducting a lottery comprising: a POS terminal (POS terminal 30) having a CPU (CPU 31) and a display (display device 31; see at least fig. 3); a network (e.g., the Internet; see at least 5:24-35) facilitating electronic communications between the POS terminal, a lottery game controller (e.g., lottery data processing system 60), a lottery transaction controller or server (e.g., POS controller 40) and one or more third party

application providers (the Examiner notes that this limitation does not require a third party application provider, but rather a network facilitating connection to one or more providers—the Internet connection described by Walker meets such a limitation); retailer software operable by said CPU for displaying an interface associated with at least one non-lottery-related retailer function on said display (see at least 6:25-32); and lottery software operable by said CPU for displaying an interface associated with at least one lottery-related retailer function on said display (see at least 6:25-32).

Further regarding claim 1, the claim language includes a limitation of lottery software operable by the POS terminal's CPU "for displaying a third interface associated with an application provided by one or more third party application providers via the network." The Examiner notes that "for displaying" is an intended use recitation and is met by the disclosure of Walker. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In the present case, Walker teaches POS

terminals connected to a POS controller (see above). Walker further teaches that existing cash registers and in-store servers may be reprogrammed to accommodate the lottery system (see at least 5:1-22). Thus, Walker indicates that the devices are capable of displaying a third interface associated with an application provided by one or more third party application providers. Furthermore, because Walker's invention includes modification of existing equipment, the Examiner submits that Walker's software may be considered a "third party" application because neither the customer nor the grocery store need be a party to Walker directly. Finally, the third party application is provided via the network at least because it requires communication between the POS terminals 30 and other controllers and/or servers discussed above.

Regarding claims 2 and 4, Walker teaches a POS terminal provided with memory and both retailer software and lottery software stored in and operable from said memory (see at least 6:25-32).

Regarding claim 3, Walker teaches retailer software is stored on a retailer controller in communication with said terminal and operable by said CPU for display on said display device (e.g., in-store servers; see at least 5:1-23 and 5:37-49).

Regarding claim 5, Walker teaches lottery software is stored on a lottery controller in communication with said terminal and operable by said CPU for display on said display (e.g. POS terminal 30; see at least 5:1-23).

Regarding claim 6, Walker describes lottery software is operable for managing lottery game offerings and wherein the [lottery-related] interface is a game selection interface (see at least 6:25-32).

Regarding claims 7-8, Walker teaches a lottery game controller hosts a plurality of available lottery games and wherein said [lottery-related] interface allows selection of a game offering hosted by said game controller and selected by a user of said POS terminal, said selection being communicated to said lottery game controller (see at least figs. 8-10 and 8:11-9:9).

Regarding claim 9, Walker describes lottery software operable for managing lottery transactions and wherein the displayed [lottery-related] interface is taken from the group consisting of: lottery ticket purchase, validation, and game result query (see at least 6:25-32 and 11:29-45).

Regarding claim 10, Walker teaches a lottery transaction controller facilitates processing of lottery transactions with a remote lottery host system (e.g., lottery data processing system 60).

Regarding claim 11, Walker teaches lottery tickets including a quick pick ticket and a draw ticket (see at least 9:44-49).

Regarding claim 12, Walker shows a POS terminal in operating communication with a printing device (e.g., printer 39).

Regarding claim 13, the Examiner interprets the recited "web browser" as a software application that enables a user to display information located on the Internet or a computer network. Since Walker describes an interface that displays information on a computer network (see at least 4:59-67), Walker meets the claimed limitation of an interface displayed via a web browser.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-26, 28-29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of U.S. 2001/0001268 to Menon et al. (hereinafter Menon).

Regarding claims 14 and 18, Walker teaches a transaction processing device and method for conducting a lottery comprising: a POS terminal (POS terminal 30) having a CPU (CPU 31) and a display (display device 31; see at least fig. 3); a network (e.g., the Internet; see at least 5:24-35) facilitating electronic communications between the POS terminal, a lottery game controller (e.g., lottery data processing system 60), a lottery transaction controller or server (e.g., POS controller 40) and one or more third party application providers (the Examiner notes that this limitation does not require a third party application provider, but rather a network facilitating connection to one or more providers—the Internet connection described by Walker meets such a limitation); retailer software operable by said CPU for displaying an interface associated with at least one non-lottery-related retailer function on said display (see at least 6:25-32); and lottery software operable by said CPU for displaying an interface associated with at least one lottery-related retailer function on said display (see at least 6:25-32).



Walker teaches the invention substantially as described above, but lacks in explicitly teaches an application programming interface (API) through which third party applications can communicate with lottery software. In a related disclosure, Menon teaches providing standard APIs that allow attachment of third party applications to the system for the purpose of trouble-shooting, error management, asset management, and service and functionality analysis (see at least paragraph 168). Therefore, it would have been obvious to modify the system and method of Walker to include an application programming interface (API) through which third party applications can communicate with system software in order to provide enhanced capabilities described by Menon above.

Regarding claim 29, Walker teaches the above limitations and further describes a means for selecting one or more lottery applications for display on a lottery interface (e.g., input device 37; see at least 6:10-18); means for communicating lottery selection to a central lottery server (e.g., communication port 35 and POS network interface 72); means for conducting lottery transaction via the point-of-sale terminal (e.g., input device 37 and display device 38); and means for conducting non-lottery transactions via the point-of-sale terminal (e.g., communication port 35, which provides all transactions between POS terminal 30 and related devices).

Regarding claims 15 and 17, Walker teaches a POS terminal provided with memory and both retailer software and lottery software stored in and operable from said memory (see at least 6:25-32).

Regarding claim 16, Walker teaches retailer software is stored on a retailer controller in communication with said terminal and operable by said CPU for display on said display device (e.g., in-store servers; see at least 5:1-23 and 5:37-49).

Regarding claims 19-21, Walker teaches a lottery game controller hosts a plurality of available lottery games and wherein said [lottery-related] interface allows selection of a game offering hosted by said game controller and selected by a user of said POS terminal, said selection being communicated to said lottery game controller (see at least figs. 8-10 and 8:11-9:9).

Regarding claim 22, Walker describes lottery software operable for managing lottery transactions and wherein the displayed [lottery-related] interface is taken from the group consisting of: lottery ticket purchase, validation, and game result query (see at least 6:25-32 and 11:29-45).

Regarding claim 23, Walker teaches a lottery transaction controller facilitates processing of lottery transactions with a remote lottery host system (e.g., lottery data processing system 60).

Regarding claim 24, Walker teaches lottery tickets including a quick pick ticket and a draw ticket (see at least 9:44-49).

Regarding claim 25, Walker shows a POS terminal in operating communication with a printing device (e.g., printer 39).

Regarding claim 26, the Examiner interprets the recited "web browser" as a software application that enables a user to display information located on the Internet or a computer network. Since Walker describes an interface that displays information on a

computer network (see at least 4:59-67), Walker meets the claimed limitation of an interface displayed via a web browser.

Regarding claim 28, Walker describes a method of adapting a point-of-sale device to incorporate lottery transaction capabilities in at least 5:1-23 (see also explanation of claims 14 and 18).

Regarding claim 31, Walker describes a lottery system comprising: a lottery server (e.g., lottery data processing system 60) operable to process lottery transactions and provide interactive lottery games over a network; and a plurality of distributor server systems (e.g. POS controllers 20 or in-store servers), each having at least one browser-based point-of-sale device (POS terminal 30; see explanation of "web browser" in relation to claims 13 and 26) for processing lottery and non-lottery transactions, said distributor server systems being in operable communication with said network (see at least fig. 1 and 6:47-57). The Examiner interprets a "self-service, browser-based point-of-sale device" as Walker's POS terminal 30 since "self-service" is functional language and its structure it is capable of use by any individual.

8. Claims 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Menon, and in further view of U.S. 2002/0062253 to Dosh, Jr. et al. (hereinafter Dosh).

Regarding claim 27, Walker teaches a system for processing lottery transactions, comprising: a POS terminal (POS terminal 30) having a CPU (CPU 31) and a display (display device 31; see at least fig. 3); a retailer controller (e.g., in-store transaction processor to receive and transmit merchandise price and other merchandise

information; see at least 5:1-23), a lottery game controller (e.g., lottery data processing system 60), and a lottery transaction controller (e.g., POS controller 40), all in communication with said POS terminal, said retailer controller including function determination means for determining whether a retailer function input via said POS terminal is lottery-related or non-lottery related (see at least 6:25-32); retailer software operable by said CPU for displaying a first interface associated with at least one non-lottery-related retailer function on said terminal display (see at least 6:25-32); and lottery software operable by said CPU for displaying a second interface associated with at least one lottery-related function on said terminal display (see at least 6:25-32).

Regarding claim 30, Walker describes a lottery system comprising: a lottery server (e.g., lottery data processing system 60) operable to process lottery transactions and provide interactive lottery games over a network; and a plurality of distributor server systems (e.g. POS controllers 20 or in-store servers), each having at least one browser-based point-of-sale device (POS terminal 30; see explanation of “web browser” in relation to claims 13 and 26) for processing lottery and non-lottery transactions, said distributor server systems being in operable communication with said network (see at least fig. 1 and 6:47-57).

As described above, Menon teaches providing standard APIs that allow attachment of third party applications to the system for the purpose of trouble-shooting, error management, asset management, and service and functionality analysis. Walker in view of Menon lacks in explicitly teaching a transaction handler for managing data exchange and communications with at least one third party application. In a related

disclosure, Dosh teaches a Transaction Handler 16 software component that receives requests from the POS terminals 12 to upload Loyalty transactions from the POS terminals 12 to a database (see at least paragraph 115). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the combined teachings of Walker and Menon to include the transaction handler software of Dosh in order to provide a secure means of communication between third party software (e.g., Dosh's player loyalty program) and existing POS software, as is favorably described by Dosh.

### ***Response to Arguments***

9. Applicant's arguments regarding claims 1-13 have been fully considered but they are not persuasive and are fully addressed in the grounds of rejection above.
10. Applicant's arguments with respect to claims 14-31 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

- 11.
12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. MCCULLOCH JR whose telephone number is (571) 272-2818. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. H. M./  
Examiner, Art Unit 3714  
2/4/2008

/Robert E Pezzuto/  
Supervisory Patent Examiner, Art Unit 3714